

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

KIRK JOHNSTON,

Plaintiff,

V.

1:20-CV-497-RP

CHAD KROEGER, MICHAEL KROEGER,  
 RYAN PEAKE, DANIEL ADAIR,  
 ROADRUNNER RECORDS, INC.,  
 WARNER/CHAPPELL MUSIC INC., and  
 LIVE NATION ENTERTAINMENT, INC.,

Defendants.

**ORDER**

Before the Court is the report and recommendation of United States Magistrate Judge Susan Hightower concerning Defendants Chad Kroeger, Michael Kroeger, Ryan Peake, Daniel Adair, Roadrunner Records, Inc., and Warner Chappell Music, Inc.’s Motion to Dismiss, (Dkt. 17), Defendant Live Nation Entertainment, Inc.’s Motion to Dismiss, (Dkt. 18), Plaintiff’s request for leave to amend, (Dkt. 21), and all related briefing. (R. & R., Dkt. 27). In her report and recommendation, Judge Hightower recommended denying Defendants Chad Kroeger, Michael Kroeger, Ryan Peake, Daniel Adair, Roadrunner Records, Inc., and Warner Chappell Music, Inc.’s Motion to Dismiss, (Dkt. 17), granting Defendant Live Nation Entertainment, Inc.’s Motion to Dismiss Plaintiff’s Complaint Pursuant to FRPC 12(b)(6) (Dkt. 18), and denying Plaintiff’s request for leave to amend, (Dkt. 21). (*Id.* at 10). Defendants Chad Kroeger, Michael Kroeger, Ryan Peake, Daniel Adair, Roadrunner Records, Inc., and Warner Chappell Music, Inc. (“Nickelback Defendants”) filed objections to the report and recommendation. (Objs., Dkt. 28).

A party may serve and file specific, written objections to a magistrate judge's findings and recommendations within fourteen days after being served with a copy of the report and

recommendation and, in doing so, secure *de novo* review by the district court. 28 U.S.C. § 636(b)(1)(C). Because the Nickelback Defendants timely objected to the report and recommendation, the Court reviews the report and recommendation *de novo*. Having done so, the Court overrules the Nickelback Defendants' objections and adopts the report and recommendation as its own order.

Accordingly, the Court **ORDERS** that the report and recommendation of United States Magistrate Judge Susan Hightower, (Dkt. 27), is **ADOPTED**.

**IT IS ORDERED** that Defendant Live Nation Entertainment, Inc.'s Motion to Dismiss, (Dkt. 18), is **GRANTED**. All claims against Defendant Live Nation Entertainment are dismissed with prejudice.

**IT IS FURTHER ORDERED** that the Nickelback Defendants' Motion to Dismiss, (Dkt. 17), is **DENIED**.

**IT IS FINALLY ORDERED** that Plaintiffs' request for leave to amend, (Dkt. 21, at 5, 14–15), is **DENIED**.

**SIGNED** on August 26, 2021.

A handwritten signature in blue ink, appearing to read 'Rob Pitman', is written above a horizontal line.

ROBERT PITMAN  
UNITED STATES DISTRICT JUDGE